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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.Nos.24707 & 24708 of 2017

&

Crl.M.P.No.14280 of 2017

Crl.O.P.No.24707 of 2017

P.Joybell ...Petitioner/ De-facto complainant

Versus

1. The State
through Inspector of Police,
Vellore North Police Station,
Vellore.(in Crime No.73 of 2007)

2. Christian Medical College and Hospital,
Ida Scuddar Road, Through its,
Medical Superintendent,
Tr.Anand Job,
S/o.Dr.C.K.Job,
CMC Hospital,Vellore.

3. Dr.D.J.Christopher

4. Dr.Debashish Danda

5. Dr.Alice George

6. Dr.V.Surekha

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to withdraw S.T.C.No.224 of 2008 pending on the file of the Judicial Magistrate IV, Vellore and transfer the same to the file of any other competent Court in Thoothukudi District.

Crl.O.P.No.24708 of 2017

1. P.Joybell

2. R.Jeyam Julius ...Petitioners/ De-facto complainants

Versus

1. Christian Medical College and Hospital,
Ida Scuddar Road, Through its,
Medical Superintendent,
Tr.Anand Job,
S/o.Dr.C.K.Job,
CMC Hospital, Vellore.

2. Dr.D.J.Christopher



3. Dr. Debashish Danda
4. Dr. Alice George
5. Dr. V. Surekha
6. The State
through Inspector of Police,
Vellore North Police Station,
Vellore. (in Crime No. 73 of 2007)

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records of the order dated 13.10.2017 passed by the learned Judicial Magistrate No. IV, Vellore in CrI.M.P.No.1920 of 2017 in S.T.C.No.224 of 2008 and set aside the same as illegal.

For Petitioner ... Mr. M. Ajmal Khan, Senior Counsel
in both Petitions for M/s. Ajmal Associates

For Respondents ... Mr. Vinoth Kumar
Govt. Advocate (CrI.side) for R1
in CrI.O.P.24707/2017 and
R6 in CrI.O.P.No.24708/2017

... Mr. S. Ashok Kumar for R2

... R3- No appearance in both petitions

C O M M O N O R D E R

CrI.O.P.No.24707 of 2017 has been filed to transfer S.T.C.No.224 of 2008 pending on the file of Judicial Magistrate IV, Vellore to the file of any other Court in Thoothukudi District. CrI.O.P.No.24708 of 2017 has been filed to set aside the order passed by the learned Magistrate refusing to recall the non-bailable warrant issued against the petitioner, who is LW1.

2. The case in S.T.C.No.224 of 2008 as against the accused for the offences under Sections 337 and 338 IPC is pending before the Judicial Magistrate IV, Vellore mainly on the allegation of medical negligence. Since the issue in this present petition is narrow, this Court is of the view that the repetition of facts of the case is not necessary. The crux of the issue involved in the above case is medical negligence, which led to the cancer of the petitioner.

3. Be that as it may be, the transfer is sought mainly on the ground that the petitioner is suffering from cancer and she has to travel a long way from Thoothukudi to Vellore.

4. This Court is of the view that she is only LW1, mainly



because she resides in Thoothukudi, the entire criminal case cannot be transferred. The petitioner's presence is required only once or twice before the Magistrate for tendering evidence. Therefore, this Court is of the view that transferring the case to other district is not required at this stage since the case is pending for a very long time.

5. As far as the other petition to recall the non-bailable warrant is concerned, this Court is of the view that object of the Court is to see that the trial reaches its logical end. In such view of the matter, the learned Judicial Magistrate is directed to recall the non-bailable warrant when the petitioner is present before the trial Court and files an application. It is made clear that the learned Judicial Magistrate shall issue a fresh proceedings for examination of witnesses on the day when the witnesses are summoned to the Court for examination without any delay, which includes LW1, the present petitioner. The learned Magistrate shall recall the non-bailable warrant and dispose of the main case itself within a period of three months from the date of receipt of a copy of the order.

Accordingly, both the Criminal Original Petitioners are disposed of. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

gpa/gba

To

1. The Judicial Magistrate IV, Vellore.
2. The Chief Judicial Magistrate, Vellore.
3. The Public Prosecutor
Madras High Court, Chennai

+1cc to Mr.S.Ashok Kumar, Advocate, S.R.No.65432

Crl. O.P. No.24707 & 24708 of 2017
& Crl.M.P.No.14280 of 2017

SSI(CO)
RGA(20/12/2021)